

A post-award order was entered on February 21, 2001, designating Dr. Velo Kass as the authorized treating physician to provide treatment for claimant's low back complaints. Dr. Kass provided treatment for claimant until he left his practice with Hays Orthopaedic Clinic in July 2002. Another board certified orthopedic surgeon with Hays Orthopaedic Clinic, Dr. Robert Bassett, then undertook care for the claimant. Because Dr. Bassett did not believe in long term narcotic pain medication for treatment of chronic pain,

he referred claimant to Dr. Cameron Knackstedt who, along with claimant's personal physician, had been prescribing narcotic pain medication for claimant. Apparently, Dr. Knackstedt had left the area and Dr. Bassett then provided claimant a written referral to Dr. Maria Tudor. But respondent refused to recognize those referrals for continuing treatment. On December 10, 2002, claimant filed an application for post-award medical seeking "reasonable and necessary continuing treatment with Dr. Bassett and his referral, Dr. Tudor."

The Administrative Law Judge (ALJ) framed the issue, at the post-award medical hearing, as whether narcotic pain medications are reasonably necessary to cure and relieve claimant from the effects of the injury. The ALJ determined the claimant had not sustained her burden of proof that the narcotic pain medication is "reasonably necessary" for her care and treatment. Therefore the ALJ granted continuing medical treatment with Dr. Bassett, but denied authorizing treatment with Dr. Tudor.

Claimant requested review and argues the ALJ prematurely determined that she is only entitled to medical care and treatment with Dr. Bassett. Claimant notes it is undisputed that the authorized treating physician, Dr. Bassett, referred claimant first to Dr. Knackstedt and then to Dr. Tudor. Because respondent refused to recognize the referral to Dr. Tudor, claimant argues the ALJ prematurely determined the reasonableness or necessity of treatment which has not yet been recommended because the doctor has not yet examined the claimant. Consequently, claimant requests the Board to recognize the authorized treating physician's referral and designate Dr. Tudor to provide continuing conservative medical treatment. In the alternative, claimant requests that Dr. Tudor be ordered to conduct an examination of claimant and provide treatment recommendations. If a dispute then exists, the matter can be determined by the ALJ.

Respondent's letter to the Board notes the ALJ's Post-Award Medical Award "supports our argument."

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The facts are essentially undisputed. After a post-award medical hearing, Dr. Kass had been designated the authorized treating physician. When Dr. Kass left the area, he referred claimant to Dr. Bassett. Dr. Bassett examined claimant on one occasion on August 29, 2002. The doctor noted claimant had a remarkably benign examination and opined that in the absence of significant objective findings her condition did not warrant the narcotic medications she was receiving. Dr. Bassett recommended claimant stop smoking and noted she would benefit from oral anti-inflammatory medication, oral anti-depressant

medication, a home program of stretching as well as an aerobic program. Lastly, the doctor encouraged claimant to go back to work.

Apparently claimant was dissatisfied with Dr. Bassett's treatment recommendations. In a September 4, 2002, letter to claimant's attorney, Dr. Bassett referred claimant to Dr. Cameron Knackstedt for her follow up care. Dr. Bassett noted:

I am referring her back to Dr. Cameron Knackstedt for her follow up care. He evidently along with Dr. Callahan, has been giving her narcotics in the form of Lortab and Percocet for her pain. As Dr. Kass has told you, this is not our treatment for chronic pain. Dr. Knackstedt will be seeing her in follow up.

I hope this information is useful to you. Please contact me, if you have any further questions. Her exam is unchanged from Dr. Kass' last visit and she has some paresthesias in the 1<sup>st</sup> dorsal webspace in the left foot. Minimal to no straight leg raising and she can toe and heel walk. Her reflexes are symmetrical. She does not have significant objective findings at this stage to warrant narcotics, which she is receiving. She will follow up with Dr. Knackstedt for these, as she so desires.<sup>1</sup>

Because Dr. Knackstedt had left the area, Dr. Bassett on December 3, 2002, referred claimant to Dr. Maria Tudor for conservative follow-up medical care. But respondent would not authorize Dr. Tudor to provide claimant's treatment and the matter proceeded to hearing.

At the hearing there was some dispute regarding the issue for the ALJ's determination. The ALJ framed the issue as whether treatment with narcotic medication was reasonable and necessary medical care. The ALJ noted:

THE COURT: We have the issue that Dr. Bassett says he's not going to treat her if treating involves long-term narcotic prescriptions, and he's kicked her back to Knackstedt for the express purpose of washing his hands of that mode of treatment and letting Dr. Knackstedt do that, if he wants to. Isn't that what Bassett did?

MR. MILLER: Essentially, yes.

THE COURT: So the fundamental issue we have to address is whether long-term narcotics is a reasonable and necessary mode of treatment for Ms. Conner's injury; that's the issue that I have to address, is it not? Not a question of whether there's been a referral, but what is reasonable and necessary within the Act.<sup>2</sup>

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<sup>1</sup> P.A.H. Trans., (Aug. 6, 2003) Resp. Ex. A.

<sup>2</sup> Id. at 7-8.

But the claimant's counsel did not agree the ALJ had correctly stated the issue.

THE COURT: Phrase the issue for me as you see it, that's what I'm trying to do.

MR. MILLER: The issue, as I see it, is whether or not my client was properly referred to Dr. Tudor for treatment, and if she has been, then the question of what that treatment would be would be a separate issue, based upon whatever Dr. Tudor recommends, which hasn't really been provided, because she hasn't been given the opportunity to see Dr. Tudor, so I'm not sure we've gotten to the issue that Your Honor mentioned. I understand that may be the point.

THE COURT: The reason that Dr. Bassett made the referral, however, is evident from his letter, that he doesn't believe in long-term narcotic therapy for treatment, and that's why he's sending her out, because he's not going to do that. So by implication, he's expecting if somebody else is going to do that, that's their decision to make, but he doesn't consider it to be appropriate treatment.

MR. MILLER: Right. Although that treatment was being provided by Dr. Kass, under the Court's order.<sup>3</sup>

The claimant argues it was simply premature to reach the issue of the appropriateness of a treatment regimen that had not been recommended. Based upon the record compiled to date, the Board agrees.

It is undisputed that Dr. Kass was designated as the authorized treating physician for treatment of claimant's low back complaints. It is further undisputed that Dr. Bassett became the authorized treating physician when Dr. Kass relocated his practice. Dr. Bassett referred claimant to Dr. Knackstedt and upon learning that Dr. Knackstedt was unavailable he then referred claimant to Dr. Tudor for follow up non-operative care.

It is an axiom of workers compensation that an authorized treating physician may refer an injured worker to other medical specialists and the employer is obligated to pay for the medical services rendered as a result of such referral.<sup>4</sup>

As long as Dr. Bassett is designated the authorized treating physician then his decisions regarding claimant's ongoing medical care as well as his referrals for that care should be controlling. The doctor never terminated his care for claimant, instead he outlined a course of treatment which he felt was appropriate. Apparently, the claimant did not agree and the doctor then ultimately referred claimant to Dr. Tudor.

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<sup>3</sup> P.A.H. Trans. (Aug. 6, 2003) at 9.

<sup>4</sup> *Blake v. Hutchinson Manufacturing Co.*, 213 Kan. 511, 516 P.2d 1008 (1973).

It must be noted that Dr. Bassett's comments regarding treatment with narcotic pain medications was limited to Drs. Knackstedt and Callahan. No such comments were made regarding Dr. Tudor. Instead, Dr. Bassett referred claimant to Dr. Tudor with the comment that "Dr. Tudor would be fine for follow up and we will be delighted if she would see Ms. Conner for her nonoperative care."<sup>5</sup> The record does not establish that Dr. Bassett's concerns regarding treatment with narcotic pain medication was directed at or included Dr. Tudor.

It is troublesome that Dr. Bassett indicated a course of treatment, narcotic pain medication, was not necessary but then he referred claimant to a doctor that he apparently felt would provide that course of treatment. It can be implied from that conduct that such a treatment regimen was inappropriate or that it was simply a course of treatment he would not recommend.

Nevertheless, it was premature for the ALJ to proceed to hearing on the issue of treatment with Dr. Tudor when that treatment regimen had neither been determined nor undertaken by the claimant. The ALJ concluded that Dr. Tudor would recommend additional treatment consisting of long term prescription of narcotic pain medications. This argument is premised on a future course of action which might or might not have occurred and was simply speculative.

The Board finds the authorized treating physician had referred claimant for treatment with Dr. Tudor. That referral was proper and must be allowed to proceed. Until Dr. Tudor recommends a course of treatment, it is premature to address the issue of whether treatment with narcotic pain medication is necessary to cure or relieve claimant from the effects of her accidental injury. In the event the doctor recommends a course of treatment which respondent finds objectionable, then that issue may be properly litigated by affording the parties the opportunity to present evidence on any disputed matters.

### **AWARD**

**WHEREFORE**, Administrative Law Judge Bruce E. Moore's Post Award Medical Award dated August 28, 2003, is modified to include Dr. Tudor as an authorized treating physician as a referral from Dr. Bassett.

**IT IS SO ORDERED.**

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<sup>5</sup> P.A.H. Trans. (Aug. 6, 2003) Resp. Ex. A.

Dated this \_\_\_\_\_ day of November 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Chris Miller, Attorney for Claimant  
James McVay, Attorney for Respondent and its Insurance Carrier  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director